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3/20

DID NOT SIGN  
NOT. OF HEAR

3/25/9

8 **BEFORE THE ARIZONA STATE BOARD OF PHARMACY**  
9

10 In the Matter of

11 **ROBERT NEUMAN,**

12 Holder of License No. T014468  
As a Pharmacy Technician Trainee  
13 In the State of Arizona

Board Case No. 09-0029-PHR

**CONSENT AGREEMENT  
FOR REVOCATION**

14  
15 **RECITALS**

16 In the interest of a prompt and judicious settlement of this case, consistent with the  
17 public interest, statutory requirements and the responsibilities of the Arizona State Board  
18 of Pharmacy ("Board") under A.R.S. § 32-1901 *et. seq.*, Robert Neuman ("Respondent"),  
19 holder of Pharmacy Technician License Trainee Number T014468 in the State of  
20 Arizona, and the Board enter into the following Recitals, Findings of Fact, Conclusions  
21 of Law and Order ("Consent Agreement") as a final disposition of this matter.

22 1. Respondent has read and understands this Consent Agreement and has had  
23 the opportunity to discuss this Consent Agreement with an attorney, or has waived the  
24 opportunity to discuss this Consent Agreement with an attorney.  
25  
26

1           2.     Respondent understands that he has a right to a public administrative  
2 hearing concerning the above-captioned matter, at which hearing he could present  
3 evidence and cross examine witnesses. By entering into this Consent Agreement,  
4 Respondent knowingly and voluntarily relinquishes all right to such an administrative  
5 hearing, as well as rights of rehearing, review, reconsideration, appeal, judicial review or  
6 any other administrative and/or judicial action, concerning the matters set forth herein.

7           3.     Respondent affirmatively agrees that this Consent Agreement shall be  
8 irrevocable.

9           4.     Respondent understands that this Consent Agreement or any part of the  
10 agreement may be considered in any future disciplinary action by the Board against him.

11          5.     Respondent understands this Consent Agreement deals with Board  
12 Complaint No. 3595 involving allegations of unprofessional conduct against Respondent.  
13 The investigation into these allegations against Respondent shall be concluded upon the  
14 Board's adoption of this Consent Agreement.

15          6.     Respondent understands that this Consent Agreement does not constitute a  
16 dismissal or resolution of any other matters currently pending before the Board, if any,  
17 and does not constitute any waiver, express or implied, of the Board's statutory authority  
18 or jurisdiction regarding any other pending or future investigation, action or proceeding.

19          7.     Respondent also understands that acceptance of this Consent Agreement  
20 does not preclude any other agency, subdivision, or officer of this State from instituting  
21 any other civil or criminal proceedings with respect to the conduct that is the subject of  
22 this Consent Agreement.

23          8.     Respondent acknowledges and agrees that, upon signing this Consent  
24 Agreement and returning this document to the Board's Executive Director, he may not  
25 revoke his acceptance of the Consent Agreement or make any modifications to the  
26

document regardless of whether the Consent Agreement has been signed by the Executive Director. Any modification to this original document is ineffective and void unless mutually agreed by the parties in writing.

9. Respondent understands that the Consent Agreement shall not become effective unless and until adopted by the Board and signed by its Executive Director.

10. If a court of competent jurisdiction rules that any part of this Consent Agreement is void or otherwise unenforceable, the remainder of the Consent Agreement shall remain in full force and effect.

11. Respondent understands and agrees that if the Board does not adopt this Consent Agreement, he will not assert as a defense that the Board's consideration of this Consent Agreement constitutes bias, prejudice, prejudgment or other similar defenses.

12. Respondent understands that this Consent Agreement is a public record that may be publicly disseminated as a formal action of the Board and may be reported as required by law to the National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank.

ACCEPTED AND AGREED BY RESPONDENT

\_\_\_\_\_  
Robert Neuman

Dated: \_\_\_\_\_

Subscribed and sworn to before me in the County of \_\_\_\_\_, State of \_\_\_\_\_,  
this \_\_\_\_ day of \_\_\_\_\_, 2009, by Robert Neuman.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission expires: \_\_\_\_\_

1 FINDINGS OF FACT

2 1. The Board is the duly constituted authority for licensing and regulating the  
3 practice of pharmacy in the State of Arizona.

4 2. Respondent holds Arizona Pharmacy Technician Trainee License Number  
5 T014468.

6 3. During all times relevant to this Complaint, Respondent was employed as a  
7 pharmacy technician trainee at Bashas' Pharmacy #100, Bashas' Pharmacy #86, Bashas'  
8 Pharmacy #160, and Food City Pharmacy #164 in Arizona (the "Pharmacies").

9 4. In October 2008, Bashas' loss personnel interviewed Respondent  
10 concerning a loss of controlled substances. Respondent admitted diverting Dilaudid  
11 (hydromorphone), Endocet (oxycodone/APAP), and oxycodone. Respondent admitted to  
12 taking at least 30 tablets of the controlled substances for his girlfriend.

13 5. A subsequent Board controlled substance audit documented shortages of  
14 the following at Bashas' Pharmacy #100: 20 tablets of oxycodone 5/325; 5 tablets of  
15 oxycodone ER 20; 10 tablets of oxycodone IR 30; 12 tablets of oxycodone IR 5; and 1  
16 tablet of oxycodone 10/325. The audit did not disclose who was responsible for the  
17 shortages.

18 6. A subsequent Board controlled substance audit documented shortages of  
19 the following at Bashas' Pharmacy #86: 1 tablet of Endocet 7.5/325; 4 tablets of  
20 oxycodone IR 5; and 1 tablet of hydromorphone 4. The audit did not disclose who was  
21 responsible for the shortages.

22 7. A subsequent Board controlled substance audit documented shortages of  
23 the following at Food City Pharmacy #164: 87 tablets of oxycodone IR 15; 1 tablet of  
24 oxycodone IR 30; and 39 tablets of oxycodone 5/325. The audit did not disclose who  
25 was responsible for the shortages.

8. A subsequent Board controlled substance audit documented shortages of the following at Bashas' Pharmacy #160: 3 tablets of oxycodone IR 15; 3 tablets of oxycodone 10/325; 9 tablets of oxycodone 7.5/325; 8 tablets of oxycodone ER 20; and 11 tablets of oxycodone IR 5. The audit did not disclose who was responsible for the shortages.

9. Hydromorphone is a Schedule II controlled substance. A.R.S. § 36-2513(A)(1)(a)(xi).

10. Oxycodone and oxycodone/APAP are Schedule II controlled substances.  
A.R.S. § 36-2513(A)(1)(a)(xiv).

11. In 2002 Respondent was convicted of misdemeanor assault in Tucson Municipal Court Case No. M-1041-CR-1108975. However, when Respondent completed his Application for Licensure as a Arizona Pharmacy Technician on August 1, 2007, he answered "No" to the question "Has the applicant had any convictions involving a misdemeanor, felony offenses or any drug-related offenses."

## CONCLUSIONS OF LAW

1. The Board possesses jurisdiction over the subject matter and over Respondent pursuant to A.R.S. § 32-1901 *et seq.*

2. The Board may discipline a pharmacy technician trainee who has engaged in unprofessional conduct. A.R.S. § 32-1927.01(A)(1).

3. The conduct described in the Findings of Fact constitutes a violation of A.R.S. § 13-1802(A)(1) (A person commits theft if, without lawful authority, the person knowingly controls another person's property with the intent to deprive that other person of such property). Theft is a crime of moral turpitude. *State v. Superior Court of Pima County*, 121 Ariz. 174, 175-76, 589 P.2d 48, 49-50 (App. 1978) (shoplifting involves moral turpitude and bears a close relationship to the common law crime of larceny).

1           4.     The conduct described in the Findings of Fact constitutes a violation of  
2 A.R.S. § 13-3406(A)(1) (A person may not knowingly possess or use a prescription-only  
3 drug unless the person obtains the prescription-only drug pursuant to a valid prescription  
4 of a licensed prescriber). Furthermore, a person may not knowingly obtain or procure the  
5 administration of a prescription-only drug by fraud, deceit, misrepresentation or  
6 subterfuge. A.R.S. § 13-3406(A)(6). In either case, such illegal acquisition, possession  
7 or procurement of a prescription-only drug is a class 1 misdemeanor. A.R.S. § 13-  
8 3406(B)(1).

9           5.     The conduct described in the Findings of Fact constitutes a violation of  
10 A.R.S. § 13-3406(A)(7) (A person may not sell, transfer or offer to sell or transfer a  
11 prescription-only drug). Such illegal transfer of a prescription-only drug is a class 6  
12 felony. A.R.S. § 13-3406(B)(2).

13           6.     The conduct described in the Findings of Fact constitutes a violation of  
14 A.R.S. § 36-2531(E) (A person may not knowingly or intentionally acquire or obtain  
15 possession of a controlled substance by means of forgery, fraud, deception or subterfuge).  
16 A person who violates A.R.S. § 36-2531(E) is guilty of a class 4 felony. A.R.S. § 36-  
17 2531(E).

18           7.     The conduct described in the Findings of Fact constitutes a violation of  
19 A.R.S. § 36-2525(D) (A controlled substance included in schedule II shall not be  
20 dispensed without the written prescription order in ink or indelible pencil or typewritten  
21 and manually signed by the medical practitioner).

22           8.     The conduct described in the Findings of Fact constitutes a violation of  
23 A.R.S. § 36-2531(A)(1) (It is unlawful for any person who is subject to A.R.S. § 36-2521  
24 *et seq.* to intentionally or knowingly distribute or dispense a controlled substance in  
25  
26

1 violation of section 36-2525). A person who violates A.R.S. § 36-2531(A)(1) is guilty of  
2 a class 4 felony. A.R.S. § 36-2531(B).

3       9.       Respondent's conduct, as described in the Findings of Fact, constitutes a  
4 violation of A.R.S. § 32-1968(A) ("A prescription-only drug shall be dispensed only  
5 under one of the following conditions: (1) By a medical practitioner in conformance with  
6 A.R.S. § 32-1921; (2) On a written prescription order bearing the prescribing medical  
7 practitioner's manual signature; (3) On an electronically transmitted prescription order  
8 containing the prescribing medical practitioner's electronic or digital signature that is  
9 reduced promptly to writing and filed by the pharmacist; (4) On a written prescription  
10 order generated from electronic media containing the prescribing medical practitioner's  
11 electronic or manual signature. A prescription order that contains only an electronic  
12 signature must be applied to paper that uses security features that will ensure the  
13 prescription order is not subject to any form of copying or alteration; (5) On an oral  
14 prescription order that is reduced promptly to writing and filed by the pharmacist; (6) By  
15 refilling any written, electronically transmitted or oral prescription order if a refill is  
16 authorized by the prescriber either in the original prescription order, by an electronically  
17 transmitted refill order that is documented promptly and filed by the pharmacist or by an  
18 oral refill order that is documented promptly and filed by the pharmacist.")

19       10.       The conduct and circumstances described above constitutes unprofessional  
20 conduct pursuant to A.R.S. § 32-1901.01(C)(6) (Committing a felony, whether or not  
21 involving moral turpitude, or a misdemeanor involving moral turpitude or any drug-  
22 related offense. In either case, conviction by a court of competent jurisdiction or a plea  
23 of no contest is conclusive evidence of the commission).

24       11.       The conduct and circumstances described above constitute unprofessional  
25 conduct pursuant to A.R.S. § 32-1901.01(C)(8) (Violating a federal or state law or  
26

1 administrative rule relating to marijuana, prescription-only drugs, narcotics, dangerous  
2 drugs, controlled substances or precursor chemicals when determined by the board or by  
3 conviction in a federal or state court).

4 12. The conduct and circumstances described above constitutes unprofessional  
5 conduct pursuant to A.R.S. § 32-1901.01(C)(13) (Knowingly filing with the Board any  
6 application, renewal or other document that contains false or misleading information).

7 **ORDER**

8 Based upon the above Findings of Fact and Conclusions of Law,

9 IT IS HEREBY ORDERED THAT License No. T014468, which was issued to  
10 Robert Neuman to practice as a pharmacy technician trainee in the State of Arizona, is  
11 hereby **REVOKED**. Respondent shall immediately return his pharmacy technician  
12 trainee license to the Board. Respondent shall not reapply for licensure with the Board or  
13 petition for reinstatement of his Arizona pharmacy technician trainee license for a period  
14 of at least five (5) years from the effective date of this Consent Agreement.

15  
16 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

17  
18 ARIZONA STATE BOARD OF PHARMACY

19 (Seal)

20  
21 By: \_\_\_\_\_  
22 HAL WAND, R.Ph.  
23 Executive Director  
24  
25  
26



1 ORIGINAL OF THE FORGOING FILED  
this \_\_\_\_\_ day of \_\_\_\_\_, 2009, with:

2 Arizona State Board of Pharmacy  
3 1700 West Washington, Suite 250  
4 Phoenix, Arizona 85007

5 EXECUTED COPY OF THE FOREGOING MAILED  
BY CERTIFIED MAIL

6 this \_\_\_\_\_ day of \_\_\_\_\_, 2009, to:

7 Robert Neuman  
7950 E. Stella # H-5  
8 Tucson, AZ 85730  
Respondent

9 EXECUTED COPY OF THE FOREGOING MAILED  
10 this \_\_\_\_\_ day of \_\_\_\_\_, 2009, to:

11 Elizabeth A. Campbell  
Assistant Attorney General  
12 1275 W. Washington Street, CIV/LES  
Phoenix, Arizona 85007  
13 Attorneys for the State of Arizona

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